



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of



DECISION

SSO/166804

PRELIMINARY RECITALS

Pursuant to a petition filed June 18, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on August 05, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in its determination of an overpayment of state SS supplement payments.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Melissa Sherry (in writing)
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. On June 23, 2015 the Department issued a notice to petitioner informing petitioner that petitioner was overpaid \$167.56 because petitioner received state SS supplement payment during March 2014 to May 2014 when petitioner was ineligible for federal SSI.
3. Petitioner appealed.

DISCUSSION

Wisconsin law requires the Department of Health Services to recover any overpayments of assistance, regardless of fault. Overpayments are collected from state SSI or caretaker supplement payments at a rate of 10% of the total overpayment each month. Wis. Adm. Code § DHS 79.40. "Incorrectly paid benefits" means that the recipient was not eligible for the benefits during the period they were paid. Wis. Adm. Code § DHS 79.30(2). The petitioner was eligible for state SSI benefits only if petitioner met the requirements of the federal program found in 42 USC 1381 through 1383d. Wis. Stat. § 49.77(2). This means that petitioner must have properly received federal SSI to receive state SSI. See Wis. Stat. § 49.77(2)(a)2; See also 20 C.F.R. §416.2025(b)(4).

Petitioner conceded at hearing that petitioner was determined ineligible for the federal SSI payments during the pertinent period. Petitioner is repaying the federal overpayment back currently. Petitioner explained that petitioner will seek a hardship waiver. There is no basis to find that any error has been committed by the Department.

CONCLUSIONS OF LAW

The Department correctly seeks repayment of the state supplement overpayment of \$167.56.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of
Madison, Wisconsin, this 27th day of
October, 2015

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 27, 2015.

Division of Health Care Access and Accountability
State SSI